



USDA Foreign Agricultural Service

# GAIN Report

Global Agriculture Information Network

Template Version 2.09

Required Report - Public distribution

**Date:** 11/15/2007

**GAIN Report Number:** EC7008

## Ecuador

## Biotechnology

## Annual

## 2007

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**Report Highlights:**

In the past two years, Ecuador has passed two laws that limit the production, use and imports of food products derived from biotechnology. Although these laws are not being fully enforced, they threaten to disrupt trade in commodities fundamental to Ecuador's food industry, and hinder prior efforts to enact technical laws to regulate biosafety and biotechnology.

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Includes PSD Changes: No  
Includes Trade Matrix: No  
Annual Report  
Quito [EC1]  
[EC]

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## Executive Summary

Ecuador does not have a specific law that regulates biotechnology and its application. However, in April and December 2006, respectively, Ecuador enacted a law on Food and Nutrition Security and a Health Code invoking the precautionary principle and calling for prohibitions against the use, handling, and import of any food products that are or contain GMOs. These regulations raised concerns regarding imports of agricultural commodities such as soybean meal and oil, corn and cotton. Food products containing GMO-derived ingredients are also included in the provisions of these regulations. Implementation of these laws, however, depends on the issuing of application rules, which can take several years to be written and agreed upon.

Ecuador ratified the Cartagena Protocol on Biosafety in November 2002, and its general policies on Biosafety are expressed in several existing laws, including the Constitution. Article 89 of Ecuador's Constitution mandates that the Government will take all measures to "regulate, under strict biosafety standards, the propagation, research, use, trade, and importation of genetically modified organisms".

## SECTION II. BIOTECHNOLOGY TRADE AND PRODUCTION

According to the Ecuadorian Institute for Agricultural Research (INIAP), given the incipient technology and infrastructure available, Ecuador does not have the capacity to conduct any GMO-related research; therefore it does not commercially produce any biotechnology crops. However, INIAP conducts genetic research to improve the quality of seeds through hybrids for cocoa, potatoes, tomato, corn, rice and soybeans.

Furthermore, given the lack of technical biotechnology legislation, Ecuador does not allow importation of seeds containing GMOs. According to the Ministry of Agriculture, all seeds used for corn, soybeans and other crops are either hybrids developed by the INIAP or other certified imported seeds that do not contain GMOs, and which have passed through a rigorous in-country certification process.

On the other hand, a growing proportion of the supply of corn, cotton, soybean meal, and soybean oil for industrial use is of foreign origin. A brief description of the commercial situation of these products follows:

- Presently, Ecuador imports 60 percent of its corn demand. Imports reached 483,000 MT in 2006, 84 percent of which originated in the United States with the remainder provided by Argentina and Uruguay.
- Ecuador purchases 99 percent of its cotton needs from the United States, reaching 13,000 MT in 2006.
- Soybean meal and oil imports are also rising with Argentina and Uruguay as main suppliers. However, in some years, Ecuador purchases significant volumes of soybean meal from the United States depending on prices. Overall imports in 2006 reached 385,000 MT for soybean meal and 114,000 MT of oil.

Finally, Ecuador has received food aid from the United States since 1985, and in the past five years it has received 60,000 MT of soybean meal, and 5,000 MT of soybean oil.

## **SECTION III. BIOTECHNOLOGY POLICY**

### **Regulatory Framework**

According to the Environmental Management Law, Ecuador's Ministry of Environment is the entity in charge of regulating the production, propagation, research, use, trade and importation of genetically modified organisms (GMOs). The same law, under Article 8, establishes the coordination authority of the Ministry of Environment over the decentralized Environmental Management System, and allows for other institutions, such as the Ministries of Agriculture, Health and Foreign Trade to have direct authority over their own relevant issues.

Although the institutions are in place, there is no specific law or regulation on biotechnology and biosafety. The environmental management law is very broad and does not deal with specific issues of agricultural biotechnology and biosafety. However, a broad national policy on biosafety is clearly expressed in existing laws. The Constitution, for example, promotes a series of guidelines regarding biotechnology; such as the right of Ecuador's people to "live in a safe and balanced environment" (article 23), the government's obligation to promote public debate regarding decisions that may affect the environment (art. 88), the precautionary principle (art. 91), the strict regulation of biosafety (art. 89), and the protection of consumer rights (art. 92).

Other national laws such as the Health Code, the Consumer Rights Protection Law, the Agricultural Development Law, the Law of Seeds, and the Plant and Animal Health Law are of general applicability but do not provide specific guidance on biosafety issues.

On the international front, as a signatory to the Convention on Biological Diversity and the Cartagena Protocol on Biosafety, Ecuador is obliged to issue policies and regulations in accordance with the precepts of these international agreements. Also, as a member of the Andean Community of Nations, Ecuador is subject to Andean Decision 523, which states that the Andean Strategy on Biodiversity must be taken into account by all members in issuing their regulations on biosafety.

Until April 2005, there was a proposed text for a "Law of Conservation and Sustainable Management of Biodiversity" (Biodiversity Law) that would have served as a framework for Ecuador's regulations on biosafety and biotechnology. The text aimed at providing technical standards and a comprehensive regulatory system that would have ensured proper control of products derived from biotechnology and would not unjustifiably block trade.

This proposed bill was first submitted to Congress in April 2002 and later debated without consensus. A second debate was scheduled for February 2003, but it never occurred. This time, political parties controlled by indigenous, environmentalist and leftist groups in the Ecuadorian Congress used filibusters to delay a decision. Finally, the proposal was tabled in 2005 and these groups counter-attacked by adding two articles to a controversial Food and Nutrition Security bill that bans any production, use, import or trade of biotech foods in Ecuador.

### **Specific Laws dealing with Biosafety and Biotechnology**

#### **Labeling: The Law for Protection of Consumer's Rights**

This law, enacted on 10 July 2000, regulates the supplier-consumer relationship by promoting knowledge and protection of consumer's rights. It has a clause stating that ambiguous dispositions should be interpreted in favor of the consumer. The public entity in

charge of enforcing this law is the Office of the Ombudsman. However, little or nothing has been done to enforce such a clause.

Regarding Biotechnology, Article 13 of this law clearly states that “in case that products sold for human or animal consumption had been produced using biotechnology or any type of genetic manipulation, labels must warn of this fact using highlighted characters”. Despite this specific regulation, there are no products in the Ecuadorian market, whether imported or locally produced, that contain such warning. Article 14 furthers the labeling requirement by establishing minimum labeling requirements for food, which should include the biotech process.

This law has a supplemental nature by leaving room for specific laws to regulate specific issues on health and safety. An inter-institutional working group that includes Ecuador’s Standardization Institute and the Ministry of Health was formed in 2004 to prepare new standards for food labeling. The proposed text has been pending submission to the WTO for comment for over two years. Based on the provision of Article 13 of the Consumer Rights law, this proposed standard would require that biotech foods to be labeled as containing GMOs, and for foods containing GMO ingredients to declare the percentage of such GMOs in their composition.

### **Imports of Vegetable Material and Animals: Laws of Animal and Vegetable Health**

Article 4 of the Vegetable Health law establishes that any import of vegetable material for propagation, including those used for research, must obtain a previous authorization from the Ministry of Agriculture. In the case of animals used for genetic improvement, the Animal Health law provides requirements and authorizations from the Ministry of Agriculture, and establishes the obligation to comply with Andean regulations.

### **Authorized Biotech Foods: Rules for Sanitary Registration and Control**

This regulation deals with the sanitary registration of national and imported food and beverage products for human consumption in Ecuador. Article 50 of this regulation makes reference to fines and penalties, which will be applied according to the dispositions of the Consumers Rights Protection law.

Furthermore, Article 54 mentions that biotech and/or GMO foods will only be authorized to enter Ecuador when such products comply with the requirements of the Ministry of Health, which would issue a positive list of transgenic products authorized for import. Such a list does not exist, and it is unlikely that it will be issued in the future given that the Ministry of Health will first need to issue general rules for the recently passed Health Code.

### **Food and Nutrition Security Law**

The main objective of this law is to promote and provide access for the population of Ecuador to food and nutrition. It declares food security as a primary national policy and creates the “National System for Food Security and Nutrition” under the Ministry of Health. The law is based on constitutional principles, such as people’s rights to quality of life through food and nutrition, and to health through protection and promotion of food security (Articles 23 and 42 of Ecuador’s Constitution). Also, it considers the Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and others (excluding the Cartagena Protocol) as the foundations for the principles of the law.

The Food and Nutrition Security bill is not a technical law and limits its ruling to social participation, sustainability, food sovereignty and others. The National System for Food Security and Nutrition is managed by the National Food Security Council (NFSC), which was created under the umbrella of the Ministry of Health, and is presided by the Minister of Health. There is no mention or participation of the Ministry of Environment (the authority on biosafety according to Ecuador's Environmental Management Law) in the NFSC. Rather, it includes members from rural and provincial representations usually controlled by indigenous groups that continue to hold negative views on biotechnology.

Article 21 represents the most controversial part of this law. Literal D under Article 21 prohibits production, use, storage, imports and marketing of foods for human consumption that are or contain GMOs until technical studies demonstrate their safety for human consumption and the environment. The National Agricultural Research Institute (INIAP) and the Agricultural Safety Service (SESA), both dependencies of the Ministry of Agriculture, shall carry out such technical studies depending on the type of product. However, neither INIAP nor SESA have the technical capacity or economic resources to carry out this research. Furthermore, Literal E of Article 21 prohibits Ecuador from receiving or using products that are or contain GMOs in the social food aid programs. Again, such prohibition stands until technical studies confirm that the products are safe for human consumption and the environment.

A final article states that this law shall prevail over other laws that may oppose its ruling. This means that even if a specific and technical biosafety law were enacted, the provisions under the Food and Nutrition Security law would take precedence.

This clearly represents a trade barrier for any commodities imported into Ecuador that may contain GMOs. In fact, soon after it was issued in May 2005, Ecuador's Ministry of Agriculture stopped imports of soybean meal and soybean oil for three weeks. This caused great difficulties to the poultry, animal feed, cooking oil and tuna canning industries.

Even though the provisions of this law were initially enforced, a technical error found in the text gave Ecuador's Attorney General enough reason to declare this bill as unenforceable. To date, the law has not been revised and there have not been reports of shipments being stopped or import permits being denied as a result of this regulation.

### **The Health Code**

As a continuation of the anti-biotechnology policy, Ecuador's Congress passed a new Health Code Law in December 2006. This is a general law dealing with the protection of human health, and includes provisions relating to food safety. This bill literally reintroduced the provisions of the Food and Nutrition Security law and corrected its technical errors. However, it does not resolve the issue of Ecuador's lack of capacity to determine the safety of food products derived from biotechnology. The law also leaves the implementation of its biotechnology-related dispositions to the application rules that are still to be issued.

The Ministry of Health of Ecuador has the lead in writing draft application rules for this law, which cannot be fully enforced without them. For this reason, imports of food products continued normally, and the Ministry of Agriculture has not issued a position on the matter. Application rules are not likely to be available anytime soon. Affected private sector industries plan to work with Ecuadorian authorities to develop implementing regulations that would not impede trade in products derived from biotechnology.

## SECTION IV. MARKETING ISSUES

The use of biotechnology in food is a new and intricate topic for discussion in Ecuador. The majority of consumers are not aware of the existence of food products derived from the use of biotechnology, and in a country with great food insecurity like Ecuador, this may not be an issue of major concern to the poor and struggling majority. However, environmental and indigenous groups are fully aware of the issue and, although they lack scientific evidence of the implications of biotechnology, they have been successful in keeping any biotech-related products from entering Ecuador as a requirement to preserve this country's mega-biodiversity. In addition, continued application of the Precautionary Principle in Ecuador is likely to create further trade controversies, as is happening with the Food and Nutrition Security law.

There is no specific information related to the market acceptance of biotech foods. However, post's perspective is that if biotech products require special labels "alerting" consumers about presumable harmful characteristics, the majority of Ecuadorian consumers will certainly reject them.

Another concern is that Ecuador currently purchases – basically from the United States and Argentina – 60 percent of its corn imports, along with 99 and 90 percent of its cotton and soybean meal needs, respectively, without any specific biotechnology requirements. The animal feed as well as the poultry, pork, cooking oil, tuna canning and snacks industries currently use these products in their formulations, and it is unlikely that Ecuador would have the capacity to supply this demand in the near future. Therefore, the latest issuance of restrictive rules not only hurt U.S. export interests, but also complicates the survival of these local industries and jeopardizes Ecuador's food security.

In addition, Ecuador does not have either the resources or the scientific capacity to conduct high-level research on agricultural biotechnology, so it must rely on foreign technologies and research results. Ecuador is also incapable of submitting enough scientific evidence about the possible risks of the use of biotechnology as a way to justify restrictive trade measures against biotech foods. However, it is clear that Ecuadorian authorities are worried about the issue of "dependence" on foreign technologies and imports of certain products, such as planting seeds and oilseeds. There is also an increased fear from farmers that allowing biotech seeds will hurt their plantations, and that using these products will turn their production capacity into a dependency relationship with multinational corporations.

Even with the lack of accurate information about biotechnology among consumers and policymakers in Ecuador, few activities related to biotech capacity building and outreach have been carried out by government institutions. However, the U.S. Agricultural Affairs Office in Quito has been active in the past few years on issues related to promoting biotechnology and agricultural research. In November 2001, post organized an EMO-funded conference on Agricultural Biotechnology presented by U.S. scientists and experts, which was directed towards local government officials involved in biotechnology and environmental issues in agriculture. Post has also made use of Cochran resources to have policy makers, key players and journalists participate in short training courses on biotechnology issues in Hawaii and Michigan. Further efforts are being made to continue with this type of assistance by using USDA's food aid programs to improve Ecuador's trade capacity by providing funds for international agricultural training and in-country research.